IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2006

CORAM

THE HONOURABLE MR. JUSTICE M. JAICHANDREN

WRIT PETITION No. 24454 of 2002
and WPMP.No. 25056 of 2003

M/s.Anees Leathers Manufacturers
rep.by its Proprietor
Mr.Anees Ahamed ... Petitioner

Vs.

1. The Government of Tamil Nadu
rep.by its Secretary,
Revenue Department,
Fort St.George, Chennai - 600 009.

2. The Special Commissioner &
Commissioner of Land Reforms,
Chepauk, Chennai - 600 005.

3. The Competent Authority,
(Urban Land Ceiling) and the
Assistant Commissioner,
(Urban Land Tax), Alandur
169, Sannathi Street,Madras - 16. .. Respondents

* * *

The Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus as stated therein.

* * *

For petitioner : M/s.V.Ramesh
For respondents : Mr.M.Mahalingam - G.A.

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O R D E R

The Writ Petition has been filed praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondents especially that of the first respondent in G.O.Ms.No.29, dated 22.01.2002, and quash the same and further directing the respondents to treat all proceedings as abated in respect of land in S.Nos.113/1B and 111/19 of Pammal Village u/s.4 of Act 20 of 1999.

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2. Heard the learned counsel for the petitioner as well as for the respondents.

3. It is the case of the petitioner that the petitioner is engaged in manufacturing of finished leather goods and is carrying on business for the past several decades. The petitioner is a small scale industry and registered as such with the Government of Tamil Nadu. The petitioner owns lands in S.Nos.113/1B measuring about 18400 Sq.mts and 111/19 measuring about 1100 Sq.mts in Pammal village. The lands are used for industrial purposes and the petitioner has constructed buildings suitable for its industrial activities. While so, the said lands belonging to the petitioner were subjected to proceedings under the Tamil Nadu Urban Land (Ceiling and Regulation) Act 1978 (herein after referred to as 'the Act') and a notice under Section 9(4), dated 05.11.1986, was issued. Presumably, an order under Section 9(5), dated 30.05.1986, was also passed by the third respondent in Rc.5383 of 86. This was followed by a final statement under Section 10(1), dated 28.12.1989. By these orders, an extent of 14610 sq.mts was declared as excess vacant land after taking into account the built up area, appurtenant and contiguous to the said built up area .

4. It is the further case of the petitioner that there were more than 8 independent buildings entitled for the appurtenant area eligibility. Instead, only two buildings were taken into account by the respondents. Further, only an extent of 500 sq.mts. have been allowed as entitlement in under Section 5(1)(iii) of the Act whereas, the petitioner would be entitled for 2000 sq.mtrs. of urban land as an industrial undertaking. Therefore, an appeal was filed and it was disposed of by an order of the second respondent. Meanwhile, the petitioner had applied to the first respondent, on 14.10.1985, for exemption under Section 21 of the Act. The Government had granted exemption vide G.O.Ms.No.104, dated 17.02.1994, and in the said government order the total extent has been taken as 19500 sq.mts in both the survey numbers and an extent of 13060 sq.mtrs was exempted under Section 21(1)(a) of the Act with a further direction to the third respondent to acquire 1100 sq.mtrs in S.No.111/19 of Pammal village. Pursuant to the order of the Government granting exemption, the competent authority again passed an order under Section 9(5), dated 07.06.1994 , without a personal hearing acquiring an extent of 1100 sq.mtrs as directed by the government. When already the competent authority had passed an order under Section 9(5), on 30.05.1986, for the entire extent which has culminated into a final statement under Section 10(1) and therefore, the second order, dated 07.06.1994, is an order in nullity, unless the earlier order was set aside by the government or by the appellate authority either under Section 34 or Section 33 of Act 24 of 1978. However, the said order of the competent authority,

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dated 07.06.1994, was questioned in appeal under Section 33 of the Act before the second respondent who, by an order, dated 01.03.1996, directed the competent authority not to proceed beyond the stage of Section 10(1) pending receipt of the orders of the government on the exemption petition filed by the petitioner pursuant to the order of the first respondent, dated 17.02.1994,. Thus, the third respondent has not proceeded to acquire the entire land beyond the stage of final statement under Section 10(1) and the entire extent of land and building is in the possession and enjoyment of the petitioner.

5. Under these circumstances, the competent authority had issued a notice, on 09.05.2001, directing the petitioner to appear for an enquiry with regard to the utilisation of excess vacant land exempted by the government in G.O.Ms.No.104, dated 17.02.1994, which had expired on 16.02.1996. Since the said notice was after the repeal of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, the petitioner had submitted a suitable reply. However, by taking report from the second respondent, dated 29.01.2001, the government has passed G.O.Ms.No.29, dated 22.01.2002, cancelling the exemption granted earlier in G.O.Ms.No.104, dated 17.02.1994, with a further direction to the competent authority to acquire 13060 sq.mtrs from the petitioners holding. The Government while passing the impugned order has invoked Section 3(1) (p) of Act 20 of 1999. The said order of G.O.Ms.No.29, dated 22.01.2002, is the subject matter of the present writ petition.

6. It is also stated by the petitioner that the respondents have acknowledged the possession by the petitioner of the lands in question and the said lands have been leased out to various parties after the Repeal Act 20 of 1999 has come into force. Therefore, the property is not vested with the government till date. It is also to be noted that no orders have been passed by the government between 17.02.1994 and 22.01.2002. The third respondent being sub-ordinate to the second respondent, who is the appellate authority, could not have proceeded further, under Section 11(1) or under Section 11(3) of the Act, in view of the orders passed by the second respondent. It is also to be noted that the third respondent had not proceeded to acquire the entire extent of lands belonging to the petitioner beyond the stage of final statement under Section 10(1) and the entire extent of land and building is still in the possession of the petitioner as the same is evidenced from the property tax assessment by the local body as well as by payment of Urban land Tax to the Tahsildar, Tambaram.

7. On a perusal of documents filed before this Court, it is seen by an endorsement made by the Principal Commissioner and the Commissioner of land Reforms, on 13.03.1996, in RC.J2/18413/95 is as follows :-

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" Endorsement Dated: 13.03.1996

Sub: Appeal - Tamil nadu Urban land (Ceiling and Regulation) Act, 1978 - Madras Urban Agglomeration Pammal Village S.Nos.113/1B and 111/19 - Appeal preferred by Tvl.Aneez Leather Manufacturers rep.by its Proprietor, Thiru Aneez Ahmed - under Sec.33 of the Act 1978 - regarding.

Ref: Appeal petition of Tvl.Aneez leather Manufacturer rep.by its proprietor Thiru Aneez Ahmed, dt:04.05.1995.

With reference to the appeal petition cited, the petitioner is informed that the Competent Authority would not proceed further to acquire the excess vacant land beyond 10(1) stage of the provisions of the Act, pending receipt of orders of the Government on the exemption petition filed by the petitioner."

Further, from the property tax receipt issued by the Office of the Special Grade Town Panchayat, Pammal Village, it is seen that the petitioner has been assessed for property tax for the years 1998 to 2000 and also urban land tax has been levied on the petitioner by the local body which also goes to show that the lands in question and the possession there of is still with the petitioner.

In such circumstances , it cannot be said that the land had been vested with the government at the relevant point of time. Therefore, according to Section 4 of the Repeal Act, Act 20 of 99, the acquisition proceedings under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, shall abate. Further, the learned counsel appearing for the respondents has not shown any records to prove that the lands in question had vested in the government prior to the coming into force of the Repeal Act, 20 of 99. Therefore, the order passed by the first respondent in G.O.Ms.No.29, dated 22.01.2002, is set aside and all proceedings initiated or proceeded with against the petitioner under the Tamil nadu Urban Land (Ceiling and Regulation) Act, 1978, stands abated. The Writ petition is allowed. Consequently, connected WPMP is closed. No costs.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Secretary,
   The Government of Tamil Nadu
   Revenue Department,
   Fort St.George,
   Chennai - 600 009.

2. The Special Commissioner &
   Commissioner of Land Reforms,
   Chepauk, Chennai - 600 005.

3. The Competent Authority,
   (Urban Land Ceiling) and the
   Assistant Commissioner,
   (Urban Land Tax), Alandur
   169, Sannathi Street,
   Madras - 16.

PLI (CO)
km/17.6.

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and WPMP.No.25056 of 2003

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